

Message Text

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ACTION OPIC-06

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TO SECSTATE WASHDC PRIORITY 1567

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E.O.11652: N/A

TAGS: EFIN, BR

SUBJECT: POLITICAL RISK CONVERTIBILITY INSURANCE (OPIC)

REF: STATE 191056

1. SUMMARY: IN RESPONSE TO REFTEL, THE FOLLOWING INFORMATION WAS DEVELOPED BY CONGEN RIO AND SAO PAULO. IT WILL BE NOTED THAT BOTH POSTS REPORT THAT FIRMS IN THEIR RESPECTIVE AREAS HAVE BEEN EXPERIENCING DELAYS IN OBTAINING APPROVALS OF REQUESTS FOR CURRENCY CONVERSION. THIS IS A DE FACTO SITUATION, ATTRIBUTABLE TO CURRENT BALANCE OF PAYMENTS DIFFICULTIES, SINCE THERE HAVE BEEN NO CHANGES INTRODUCED RECENTLY IN BRAZIL'S EXCHANGE CONTROL REGULATIONS. END SUMMARY.

2. ACCORDING TO CONGEN SAO PAULO, IT IS INCREASINGLY DIFFICULT TO GET APPROVAL FROM THE INPI ON ROYALTY, TECHNICAL KNOW-HOW AND OTHER TECHNICAL ASSISTANCE PROGRAMS INVOLVING THE REMITTANCES OF FUNDS TO THE LESSOR OF THE TECHNICAL INFORMATION. ANOTHER COMPLAINT MOST OFTEN HEARD FROM LAWYERS IS THAT IT HAS BECOME MORE AND MORE DIFFICULT TO REGISTER CRUZEIRO PROFITS GENERATED BY FOREIGN FIRMS ESTABLISHED IN SAO PAULO WITH THE CENTRAL BANK FOR THE PURPOSE OF EXPANDING THE FOREIGN CAPITAL

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BASE OF THESE CORPORATIONS.

3. THERE HAS NOT BEEN ANY DELAY IN THE APPROVAL OF 63 OR 4131 LOANS, NOR HAS THERE BEEN A SUBSTANTIAL DELAY IN THE REMITTANCE OF DIVIDENDS, ALTHOUGH ACCORDING TO CONSULATE'S CONTACTS IT USUALLY TAKES BETWEEN 90/120 DAYS TO OBTAIN APPROVAL OF DIVIDEND AND PROFIT REMITTANCES BY THE CENTRAL BANK.

4. PARA 3 OF REFTEL REQUESTS THAT POSTS DESCRIBE THE REASONS FOR DELAYS OF OVER 30 DAYS IN REMITTANCES OF DIVIDENDS, ROYALTIES AND OTHER FINANCIAL PAYMENTS. IT IS THE OPINION OF SEVERAL LARGE U.S. INVESTORS IN SAO PAULO AND OF THE LAWYERS OF THE CHAMBER OF COMMERCE LEGISLATIVE COMMITTEE THAT THE SLOWDOWNS THAT HAVE DEVELOPED IN RECENT MONTHS ARE DUE MAINLY TO BRAZIL'S CURRENT BALANCE OF PAYMENT DIFFICULTIES. HOWEVER, IN THE CASE OF ROYALTIES AND TECHNICAL KNOW-HOW PAYMENTS, IT IS INCREASINGLY APPARENT THAT A NEW PHILOSOPHY HAS DEVELOPED AMONG DECISION-MAKERS AT INPI, WHEREBY ROYALTIES AND OTHER SIMILAR-TYPE PAYMENTS SEEM TO BE SYSTEMATICALLY DISCOURAGED.

5. CONGEN RIO REPORTS THAT FIVE LARGE RIO AREA U.S. INVESTORS AND ONE U.S. BANK IN RIO REPORT NO EXCESSIVE, OR INCREASING, DELAY IN CENTRAL BANK APPROVAL OF PROFIT OR DIVIDEND REMITTANCES. THE COMPANIES CONSULTED (EXCEPT FOR ONE COMPANY THAT REINVESTS ALL PROFITS) REPORT THAT DIVIDEND OR PROFIT REMITTANCES ARE USUALLY APPROVED WITHIN A MONTH. THIS TIME PERIOD HAS BEEN MORE OR LESS CONSTANT OVER THE LAST YEAR OR MORE AND THE COMPANIES CONSULTED REPORT THEMSELVES QUITE SATISFIED WITH GOB PERFORMANCE IN THIS AREA. THE BANK CONSULTED REPORTS HEARING NO COMPLAINTS ON THIS SCORE, EITHER. SOME PROBLEMS IN FULFILLING CENTRAL BANK DOCUMENTATION REQUIREMENTS WERE REPORTED BUT THIS WAS CHARACTERIZED AS ONLY BEING A "NUISANCE". ONE COMPANY CONSULTED REPORTS THAT OVER THE LAST FEW YEARS BRAZIL'S "RATING" AT THE BOSTON HEADQUARTERS, HAS IMPROVED FROM "BLOCKED EXCHANGE" TO "FREE EXCHANGE", NOT BECAUSE OF ANY CHANGE IN GOB LIMITED OFFICIAL USE

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POLICY BUT BECAUSE VIRTUALLY ALL OTHER LATIN AMERICAN COUNTRIES HAVE CHANGED FOR THE WORSE AS FAR AS CURRENCY TRANSACTIONS ARE CONCERNED. ANOTHER COMPANY REPORTED THAT WEEKLY CONVERSION LIMITS ARE OFTEN SET ON REMITTANCES BUT THAT THIS IS ONLY A NUISANCE SINCE SHORT-TERM PAPER HAS ALWAYS YIELDED MORE IN CURZEIROS THAN HAS BEEN LOST THROUGH DEVALUATIONS.

6. DELAYS ARE REPORTED FOR CENTRAL BANK REGISTRATION OF CRUZEIRO PROFIT REINVESTMENT. THIS AREA WAS CONSIDERED TO BE OF SUFFICIENT CONCERN TO AMERICAN INVESTORS THAT EARLIER THIS YEAR A DELEGATION SPOKE WITH CENTRAL BANK PRESIDENT PAULO LIRA ON THE MATTER. LIRA ASSURED THE BUSINESSMEN HE WOULD ACT TO LESSEN THE WAITING PERIOD FOR REGISTRATION OF REINVESTMENTS. SINCE THE VISIT, (APPROXIMATELY 6 MONTHS) THE TIME REQUIRED FOR CENTRAL BANK APPROVAL HAS REPORTEDLY DIMINISHED.

7. ONE CONGEN RIO SOURCE ALSO REPORTS THAT LOCAL BANKERS AND OTHER OBSERVERS OF THE ECONOMIC SCENE DO EXPRESS CONSIDERABLE CONCERN OVER THE BRAZILIAN BALANCE OF PAYMENTS SITUATION AND THE POSSIBILITY THAT CONTINUED DETERIORATION OF RESERVES MIGHT LEAD THE GOB TO CONSIDER SOME FORMAL OR INFORMAL RESTRICTION ON PROFIT REMITTANCES. THIS WOULD ONLY TAKE PLACE AS A LAST RESORT, BUT THE TACT OF SUCH SPECULATION MAY INDICATE THAT THE LAST RESORT MAY NOT BE THAT FAR AWAY. THERE EXISTS LEGAL BASIS FOR A RESTRICTION ON PROFIT REMITTANCES (ARTICLE 28 OF LAW 4131, AS IMPLEMENTED IN DECREE-LAW NUMBER 55,762 OF FEBRUARY 17, 1965), BUT IT WOULD BE MUCH EASIER FOR THE GOB TO SLOWDOWN REMITTANCES "DE FACTO" AND NOT RAISE QUESTIONS OF CONFIDENCE THAT MIGHT ARISE FROM ANY DE JURE ACTION. AS NOTED WE HAVE NO EVIDENCE YET OF DE FACTO ACTION.

8. RIO SOURCES CONFIRM THAT INPI APPROVAL OF ROYALTY TECHNICAL ASSISTANCE AGREEMENTS HAVE SLOWED DOWN, IF NOT HALTED, IN RECENT MONTHS. THIS IS DUE TO A) A FUNDAMENTAL POLICY STUDY BEING UNDERTAKEN BY INPI, B) BALANCE-OF-PAYMENTS WORRIES, AND C) BUREAUCRATIC DELAYS. PROBLEMS WITH INPI, THOUGH, DO NOT APPEAR TO BE LIMITED OFFICIAL USE

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RELEVANT TO OPIC'S REQUEST SINCE A) AS FAR AS WE KNOW OPIC INSURANCE DOES NOT COVER SUCH TECHNOLOGY AGREEMENTS AND B) EXCHANGE PROBLEMS COULD ARISE ONLY AFTER AN AGREEMENT HAS BEEN APPROVED BY INPI. THE COMPLAINTS WE HEAR OF ONLY REFER TO APPLICATIONS AND NOT TO APPROVED AGREEMENTS. A REFUSAL TO ALLOW PAYMENTS UNDER APPROVED AGREEMENTS WOULD BE MOST SERIOUS AND IS NOT EXPECTED BY LOCAL OBSERVERS. IN ANY CASE, INPI DOES NOT GET INVOLVED IN APPROVING PAYMENTS UNDER APPROVED AGREEMENTS. THIS IS A CENTRAL BANK RESPONSIBILITY. INPI PRESIDENT HATTAB IS OUTSPOKEN IN HIS DISLIKE FOR LAWYERS. HIS POLICY IS TO DEAL DIRECTLY WITH COMPANY REPRESENTATIVES RATHER THAN THROUGH LAWYERS ACTING AS INTERMEDIARIES. THIS ATTITUDE MAY ACCOUNT FOR SOME OF THE PROBLEMS REPORTED BY SAO PAULO LAWYERS ALTHOUGH, AS NOTED ABOVE. INPI DOES NOT SEEM TO

BE DOING MUCH ANY WAY IN THE WAY OF APPROVALS.
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